

DEPARTMENT OF STATE REVENUE

28970595.LOF

LETTER OF FINDINGS NUMBER 97-0595

Controlled Substance Excise Tax

For The Period: 08/13/97

NOTICE: Under IC 422-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES

I. Controlled Substance Excise Tax - Possession

Authority: IC 6-7-3-5

The taxpayer protests assessment of controlled substance excise tax.

II. Tax Administration - Penalty

Authority: IC 6-7-3-11.

The Taxpayer protests assessed penalty.

STATEMENT OF FACTS

The Indiana State Police Marijuana Eradication Unit spotted marijuana growing on property occupied by the taxpayer and owned by his spouse. Charges were filed by the Monroe County Prosecutor but were dismissed and a controlled substance excise tax assessment was made. The Department issued a jeopardy assessment against the taxpayer based on the taxpayer's possession of 3,493.20 grams of marijuana. The taxpayer was assessed \$24,452.40 by the Department on October 28, 1997.

Additional facts will be provided as necessary.

I. Controlled Substance Excise Tax - Possession

DISCUSSION

Indiana Code 6-7-3-5 states:

The controlled substance excise tax is imposed on controlled substances that are:

- (1) delivered;
- (2) possessed; or
- (3) manufactured;...

During the hearing, the taxpayer stated that the marijuana at issue was his, and that his spouse knew nothing of the controlled substance growing on their property. Therefore, the Department finds that the taxpayer was in possession of the marijuana in question.

FINDING

The taxpayer's protest is denied.

II. Tax Administration - Penalty

DISCUSSION

The taxpayer protests the assessed 100% penalty. Indiana Code 6-7-3-11 states in pertinent part, "A person who fails or refuses to pay the tax imposed by this chapter is subject to a penalty of one hundred percent (100%) of the tax in addition to the tax."

FINDING

The taxpayer's protest of the Department's imposition of a one hundred percent (100%) penalty is denied.